



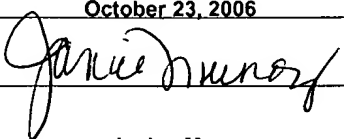
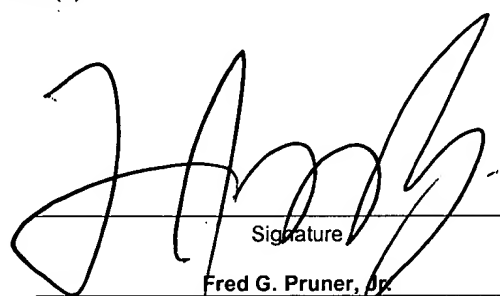
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		ITL.0215US (P7121)	
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	09/342,765	06/29/1999	
	First Named Inventor		
	David J. Matz		
	Art Unit	Examiner	
	2173	Cao H. Nguyen	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		Fred G. Pruner, Jr.	
<input checked="" type="checkbox"/> attorney or agent of record.		Typed or printed name	
Registration number <u>40,779</u>		<u>(713) 468-8880</u>	
		Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.		<u>October 23, 2006</u>	
Registration number if acting under 37 CFR 1.34 _____		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicants:	David J. Matz, et al	§	Art Unit:	2173
Serial No.:	09/342,765	§	Examiner:	Cao H. Nguyen
Filed:	June 29, 1999	§	Assignee:	Intel Corporation
Title:	Portable User Interface For Presentation Of Information Associated With Audio/Video Data	§ § § § § §	Docket No.	ITL.0215US (P7121)

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant seeks pre-appeal review of the rejections of claims 1-31. Claims 1-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Peyer in view of Doyle.

A *prima facie* case of obviousness has not been established for any of claims 1-31 for at least the reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Peyer's user interface so that the interface displays a multimedia presentation. Such a modification is directly opposed to Peyer's disclosure, in that Peyer teaches establishing separate browser instances for user control and viewing multimedia content. Peyer, 6:34-35. Thus, Peyer itself is evidence that a suggestion or motivation does not exist in the prior art for Peyer's modification as proposed in the Final Office Action.

The specific language from Doyle now cited by the Examiner merely recites that a computer may view of large amounts of data over the Internet. Applicant fails to see how this provides the requisite suggestion or motivation for Peyer's modification.

Date of Deposit: October 23, 2006

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Janice Munoz

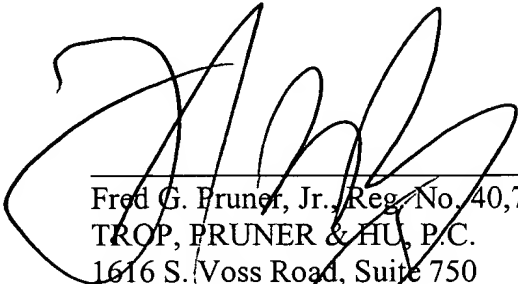
The Examiner speculates that the modification of Peyer's browser is a "design choice" but provides no objective evidence, which would support Peyer's modification to derive the claimed invention.

Obviousness is evaluated based on objective evidence. *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). Although the Examiner refers to *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988), contrary to the Examiner's position, in *In re Fine* the Federal Circuit held that the Examiner had failed to establish a *prima facie* case of obviousness because of the Examiner's bald assertion that a substitution "would have been within the skill of the art," without offering any support for or explanation of this conclusion. *In re Fine*, 5 USPQ2d at 1599. The Federal Circuit agreed with the appellant that a *prima facie* case of obviousness had not been established and stated, "one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *Id.*, 1600. *See also, W.L. Gore & Associates, Inc v. Garlock, Inc.*, 220 USPQ 303, 312-13 (Fed. Cir. 1983) (stating, "to imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against his teacher"); *Al-Site Corp. v. VSI Int'l, Inc.*, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999) (stating, "rarely, however, will the skill in the art component operate to supply missing knowledge or prior art to reach an obviousness judgment"). Therefore, Applicant maintains that the § 103 rejections of claims 1-31 are improper and respectfully requests withdrawal of these rejections.

The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0215US).

Respectfully submitted,

Date: October 23, 2006



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